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PRINCIPAL NAZI ORGANIZATIONS INVOLVED IN WAR CRIMES AND THEIR POLICY-MAKING OFFICIALS

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LEGISLATIVE AGENCIES INVOLVED IN WAR CRIMES

Draft for the War Crimes Staff

by.

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TABLE OF CONTENTS

INTRODUCTION

I. LEGISLATION AND PARTICIPANTS IN LEGISLATION PRIOR TO THE OUTBREAK OF THE WAR 1

A. Reich Legislation 2

1. Cabinet and Cabinet Legislation 3

2. Legislation by Führer decree 8

3. Reichstag and Reichstag Legislation 10

4. Legislation by Decrees of Ministers and Other Executive Agents 11

B. Länder Legislation 16

1. Prior to 30 January 1934 16

2. After 30 January 1934 18

II. LEGISLATION AND PARTICIPANTS IN LEGISLATION DURING THE WAR 21

A. The Ministerial Defense Council and its Legislation 21

B. Other Types of Legislation During the War 26

APPENDIX: Reference List to Sources on Other Governmental Agencies 27

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 SECRET

INTRODUCTION

CRIMINAL RESPONSIBILITY OF GERMAN LEGISLATIVE AGENCIES

The purpose of this paper is to indicate the channels of responsibility for war crimes, insofar as they were expressions of Nazi legislation, rather than to present the case for criminal responsibility in any specific instances. The paper includes, accordingly:

a) A brief outline of the major legislative bodies and authorities, such as the Reich Cabinet and the Ministerial Defense Council, and their main functions and responsibilities; and

b) A list of documents dealing with the structure and organization, as well as the functions, of the remaining (mainly executive) governmental agencies and authorities. Such documents are listed and briefly described in the Appendix.

I. LEGISLATION AND PARTICIPANTS IN LEGISLATION PRIOR TO THE OUTBREAK OF THE WAR

It was characteristic of the Nazi regime that the preponderant portion of its policies and measures were put into practice through the execution of rules and regulations which were clad in the form of laws (statutes, decrees, edicts, etc.). This is true even for many acts coming under the heading of war crimes (domestic or foreign). While certain types or aspects of such criminal acts were illegal even as measured by the yardstick of Nazi law,[1/]

1/ "Nazi Plans for Dominating Germany and Europe: Domestic Crimes; Part I"; R & A Report No. 3114.2; "Principal Nazi Organizations Involved in the Commission of War Crimes: the Gestapo," R & A Report No. 3113.6; and "The Attitude of the NSDAP Toward Political Terror," R&A Report No. 3114.1.

others simply expressed or implemented/duly enacted by Nazi legislation bodies and agencies.[1] Persons and agencies participating in the enactment of such laws can thus be made directly responsible for having instigated, or having taken an active part in, the commission of the respective crimes. We shall describe subsequently the bodies and agencies involved in legislation during the various stages of the Nazi regime. Persons concerned with this legislation can be easily spotted once the body or agency involved has been identified, and will not usually be mentioned by name. In order to indict them for participation in the commission of a specific crime, it will, of course, be necessary to show that they were involved in the enactment of specific legislative measures embodied in some specific statute, decree, or the like. In the material which follows, only the general background for judging the criminal responsibilities of specific legislators will be given.

Two major stages may be distinguished in the development of the Nazi legislative system: the pre-war phase, from 1933 to September 1939; and the war phase, from September 1939 to the end of the regime. During the initial stage of the pre-war phase, two types of legislation existed side by side: Reich legislation and genuine legislation by the member-States (Länder)

A. Reich Legislation

When the Nazis came to power the main legislative

1/ Examples may be found in any of the special papers dealing with specific organizations or types of crimes (e.g., anti-Jewish legislation, anti-Church legislation, oppressive legislation for occupied territories).

body of the Reich, the Reichstag, had ceased to function properly for more than a year. But while the bulk of legislation, during that period of the disintegration of the Republic, had been in the form of presidential emergency decrees, the Reichstag, according to the law of the Weimar Constitution, still constituted the supreme law-making body. After the Hitler cabinet had taken over on 30 January 1933, both systems, lawmaking by parliament as well as lawmaking by presidential decree, were virtually abolished and replaced by a system of cabinet legislation, which itself was soon transformed into legislation by fiat of the Führer, who used the cabinet only as an advisory body. Besides this pseudo-cabinet legislation, there developed also a type of legislation by outright Führer decree, as well as certain remnants of Reichstag legislation.

1. Cabinet and Cabinet Legislation. The Reich Cabinet (Reichstregierung), which under the Weimar Constitution was not a legislative but an executive body, and even in the later period of disintegration had assumed decree power only with the backing and through the participation of the Reich President, in 1933 emerged as the supreme legislative body of the Reich. This power was conferred upon it by an Enabling Act (Gezetz zur Behebung der Not von Volk und Reich) passed by the Reichstag on 24 March 1933, 1/

1/ RGBl, 141. There were serious doubts about the validity of the law, with regard both to the circumstances surrounding its enactment (violence and pressure exercised during the election campaign and later against members of certain parties represented in the Reichstag), and to its continued validity after the replacement of government by a purely Nazi cabinet.

which gave the cabinet the additional power of enacting Reich laws. This authorization, which originally had been limited to four years, was repeatedly extended, so that it came to cover the entire period of the Nazi regime. 1/ Actually, however, cabinet legislation was the predominant type of lawmaking only during the pre-war phase.

Statutes passed by the Hitler cabinet developed into something entirely different from decisions made by a democratically organized and collectively proceeding body. Cabinet decisions became decisions by the Führer, who considered the other members of the body merely advisors. According to a high official of the Reich Chancellery, there was no voting in the cabinet after January 1933, even though no formal cabinet agreement was made to that effect: "The dominating personality and actual power position of the Führer made it unthinkable right from the outset that the Cabinet should make a decision which was not in conformity with the will of the Führer. The Cabinet therefore from the beginning was nothing more than a council to the Führer (Führerrat), which had to advise the Führer. 2/ And the foremost Nazi theoretician of public law 3/ summed up the development by stating that "the will of the government is not found by voting but by a decision of the Führer

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1/ In 1937 (law of 30 January 1937, RGBl. I, 105) 1941, and 1943 (Führer decree of 10 May 1943, RGBll. I, 295).

2/ Hermann von Stutterheim (Councillor in the Reich Chancellery): Die Reichskanzlei, Berlin, 1941, p.19.

3/ Ernst R. Huber: Verfassung (Hamburg 1937), p. 124.

based upon common deliberation."

Even this latter requirement of "common deliberation", however, gradually lapsed and was replaced by the so-called Umlaufsverfahren (circulation procedure), a process in which a bill was passed not after a normal meeting and deliberation in the Cabinet, but after mere routing of the draft among the various members for their written expression of positive opinion. 1/ The task of oganizing this procedure, of informing the Führer and getting his supreme decision as well as seeing to it that the bill was properly circulated among the ministers, fell to the Chief of the Reich Chancellery (Lammers), who thus became a figure of increased responsibility, a kind of real "minister for legislation." In addition, he had the job of preparing Hitler's decision as to what measure to enact as a law, and in each specific case, which of the various forms and procedures should be used. These possibilities included Cabinet law(after either a formal meeting or the circulation provision), later decree by the Ministerial Defense Council, Führer decree, and rarely Reichstag legislation. 2/ Lammers also was instrumental in seeing to it that a measure, prepared by one or several ministries concerned, first got the consent of the other ministers and that possible dissensions were eliminated before it was put before the Führer for his final decision. 3/ For this

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1/ Von Stutterheim, op. cit., p. 27.
2/ Ibid,, pp. 27ff.
3/ Ibid., p. 32.

purpose, he often presided over actual cabinet meetings convened without the Führer's presence. 1/

While the final decision in "cabinet legislation" rested with Hitler, it should not therefore be assumed that the other members were not responsible for the laws passed "by the cabinet." In actual practice, most bills continued to originate in a specific ministry, and then, perhaps following consultations with other interested ministries, were opened to objections and suggestions from all other members of the cabinet, either in formal meeting or in the circulation procedure. The ministers, in particular those on whose special responsibility the measure in question was passed, constituted what Nazi theory called "genuine sub-leaders," charged by the Führer with responsibility for their respective spheres of action. 2/ Even those who may have objected to a measure cannot thereby be considered as absolved from responsibility, because they continued to remain in the cabinet and thereby assumed over-all responsibility for the general policies of the regime.

To discover more specifically who, among the various ministers who were members of the Cabinet at the time of the passing of an act, were above all others responsible, the signatures placed with Hitler's beneath the statute in question should be considered, because this co-signature

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1/ Ibid., pp. 32f.

2/ See "The Leadership Principle and Criminal Responsibility," R&A Report No. 3110, pp. 4ff.

implied the assumption of responsibility. 1/ The form of a Cabinet law may be illustrated by any of the measures belonging to this type published in the Reich Statute Book, the Reichsgesetzblatt, -- for example, the Reich Labor Code (Gesetz zur Ordnung der nationalen Arbeit) of 20 January 1934, which starts with the introductory formula common to all cabinet laws:

> "The Reich Cabinet has enacted the following law which is promulgated herewith."

Then the text of the law appears, followed, after the date-line "Berlin, 20 January 1934," by the signatures:

> "The Reich Chancellor (after August 1934 always signing as "The Führer and Reich Chancellor")
> Adolf Hitler
>
> The Reich Labor Minister
> Franz Seldte
>
> The Reich Economic Minister
> Dr. Schmitt
>
> The Reich Minister of Justice
> Dr. Gürtner
>
> The Reich Minister of Finance
> Graf Schwerin von Krosigk
>
> The Reich Minister of the Interior
> "Frick"

Thus, while all those should be considered accountable who were Cabinet members at the time of the enactment of the incriminating legislation in question, a particularly strong responsibility attaches to those who signed the

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1/ See Ernst R. Huber, Verfassung, Hamburg, 1937, pp 115ff.

particular law.[1]

2. Legislation by Fuhrer-Decree. Even the more or less formal requirement of having the Cabinet members participate in some way in cabinet legislation was dropped when Hitler developed the practice of legislating by "edict" or "decree" (the German term is "Erlass")[1a] whenever it pleased him. This practice developed out of Hitler's inheritance of presidential powers after Hindenburg's death in August 1934. But while the earlier of these "Erlasse" referred to purely executive matters which had always been dealt with by presidential decrees rather than by formal statutes, they soon were extended to the regulation of matters previously in the realm of real legislation. Up to the outbreak of the war, such Fuhrer decrees were still the exception as compared with cabinet legislation, usually referring to organizational affairs: the establishment of new offices and agencies, the appointment of persons to newly-created positions, and

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1/ Not much attention needs to be paid to the specific procedure of the plebiscite, laid down in the law of 14 July 1933 (RGBl.I, 479). According to this law, the Cabinet could order a plebiscite on any intended measure, including the enactment of a law. In reality this procedure was resorted to very rarely and only for propagandistic purposes. There was only one law (the law concerning the merger of the Presidency with the office of the Reich Chancellor, of 1 August 1934, RGBl. I, 747) where such a plebiscite was arranged and in that case significantly, after the law had been enacted (on 19 August 1934). The semblance of popular assent in this case cannot exempt the Cabinet members from responsibility for enacting it.

1a/ In exceptional cases also called "decree"("Vorordnung") e.g., the Hitler decree (Verordnung) appointing Göring chief of the Four Year Plan and defining his powers (RGBl.I,p.887).

similar matters. After the outbreak of the war they tended more and more to infiltrate into the province of all other lawmaking agencies. Since no legal basis was ever provided for this type of autocratic legislation,*/ there was no fixed procedure. However, such decrees used to be countersigned, like statutes, by the minister or ministers concerned, and the role of Lammers as Chief of the Reich Chancellery was the same here as in the case of Cabinet legislation. 2/ Responsibilities, in this case, would therefore seem to be similar to those for Cabinet laws, with the exception that not all Cabinet members but only those signing the decree can be considered directly responsible. The "Decree concerning the Establishment of a Chief of the German Police in the Reich Ministry of the Interior" of 17 June 1936, 3/ is an example. There is no introductory statement concerning enactment and promulgation. The decree starts immediately with the text of the stipulations. After the date-line "Berlin, 17 June 1936" follow the signatures:

"The Führer and Reich Chancellor
Adolf Hitler

The Reich Minister of the Interior
Frick"

It will be noted that such decrees were published in the Reich statute Book exactly like any other statue.

1/ See von Stutterheim, op. cit., p. 20

2/ Ibid, pp. 33f

3/ RGBl. I, p. 487.

3. Reichstag and Reichstag Legislation. After the passing of the Enabling Act of 24 March 1933, the role of the Reichstag in lawmaking became negligible. While legally its right to enact laws continued side by side with the other modes of lawmaking, in actual practice that body, composed exclusively of Nazis, was allowed to function as a showpiece only, without any influence or initiative of its own. The Reichstag was called to pass laws only on very few occasions. For example, it met, as was legally unavoidable, in order to pass the various extensions of the original Enabling Act, and, in addition, in some few instances when the regime wanted to provide the measure envisaged with specific symbolic significance. Such an instance occurred when the Law Concerning Protection of German Blood and German Honor, of 15 September 1935,[1] one of the three so-called Nurnberg Laws, was passed by a specially convened Reichstag at the time and place of the Party Congress. This law begins as follows:

> "Imbued with the conviction that the purity of German blood is the condition for the continued existence of the German people, and animated by the irrevocable resolve to safeguard the German nation for all future, the Reichstag has unanimously enacted the following law which is promulgated herewith."

After the text follows the dateline "Nurnberg, 15 September 1935, at the Party Congress of Freedom," and then the following signatures:

1/ RGBl. I, 1146.

"The Fuhrer and Reich Chancellor
Adolf Hitler

The Reich Minister of the Interior
Frick

The Reich Minister of Justice
Dr. Gürtner

The Deputy of the Fuhrer
R. Hess
Reich Minister without Portfolio"

No deliberation was allowed to take place in case of such occasional Reichstag legislation: all laws were passed unanimously. Still, members present at the respective meetings were not forced to attend, and their participation in the respective laws would seem to render them responsible (although to a lesser degree than the initiators and signers of the statute) for the contents and consequences of the measures.

4. Legislation by Decrees of Ministers and Other Executive Agents. Cabinet laws, Fuhrer decrees, and Reichstag statutes exhaust the list of instruments of Reich laws proper. However, by far the largest number of "laws" were not put into the form of any of these three official types of lawmaking but took the form of decrees (Verordnungen) issued by ministers or other high Reich authorities, such as the Four Year Plan Commissioner. Nor were the majority of these decrees of less importance than "genuine" laws. For, while ministries and similar authorities in Germany always used to issue executive decrees implementing in detail certain laws which authorized them to do so, in the Nazi system of legislation

such decrees frequently became something much more important, namely, real laws laying down new and fundamental rules for the field or question with which the agency had to deal.

Formally, such decrees had always to have a basis in some statute (cabinet law, Reichstag statute, or Führer decree) authorizing some ministry or similar agency to issue them. But the authorizing laws became more and more mere "frame" laws (Rahmengesetze), which in themselves did not contain many substantial regulations but simply created some authority for a certain function, leaving detailed regulation to decree by such authority; or they authorized some existing agency to regulate a certain matter by issuing decrees; or enunciated some usually vague general policy line while leaving all more detailed lawmaking on the respective matter again to some executive authority. Thus, the Cabinet Law of 13 September 1933 on the Establishment of the Reich Food Estate 1/ simply authorized the Reich Minister for Food and Agriculture to create such an organization and gave him the power to issue the necessary executive and supplementary decrees. Similarly, the Cabinet Law of 27 February 1934, 2/ after setting forth some fundamental principles, authorized the Reich Minister of Economics to issue executive and supplementary decrees in conjunction with the Reich Interior Minister:

1/ RGBl. I, 626

2/ RGBl. I. 185

> "The Reich Minister of Economics, in conjunction with the Reich Minister of the Interior, may issue decrees (Rechtsverordnungen) and general administrative directives for the execution of this law; he may further, in conjunction with the Reich Minister of the Intérior, issue decrees of a supplementary character."

As the term "supplementary" decree already indicates, many laws permitted the issuance not only of executing or implementing provisions but also of stipulations adding new and often fundamental rules to those established by the law. Thus almost the entire increasingly severe anti-Jewish legislation was enacted in the form of such additional and "supplementary" decrees, all based on the still relatively mild and innocuous Reich Citizenship Law of 15 September 1935, 1/ which authorized the Interior Minister, in conjunction with the Deputy Führer, to issue supplementary decrees.

The fact that these "executive" decrees were in reality real laws is corroborated by their publication in the Reich Statute Book. Their form was usually the following: 2/

> First, the introductory formula: "On the basis of the law on the reunion of Austria with the Reich of 13 March 1938, 3/ the following is decreed." After text and date follow the signature:

1/ RGBl. I, 1146
2/ Illustration from Decree concerning the Cancellation of Citizenship and the Revocation of the Acquisition of Citizenship in the Ostmark, of 11 July 1939, RGBl. I, 1235.
3/ RHBl. I, p. 237

"The Reich Minister of the Interior
Frick

The Reich Foreign Minister
von Ribbentrop

The Reich Minister of Finance
(the deputy)
Reinhardt"

As to responsibilities for the measures thus enacted, there can be no doubt that those directly instrumental in the issuance of the respective decree-above all, the ministers or agents who signed it - are primarily responsible. The question arises as to whether those who gave the original authorization to issue the decree, i.e., the signers of the "enabling" law (cabinet, etc.), could also be held responsible. Under "ordinary" standards of a liberal state, it would probably be necessary to prove that such persons not only signed the enabling instrument but were also aware of what the decrees based upon such authorization might entail. However, according to Nazi notions of leadership, broader standards of interpretation should prevail. Nazi concepts of "leadership" have been such that a Nazi leader (anybody occupying a high position, in state, Party, or any other organization in the regime) had authority over, and responsibility for, anything which happened in his functional and regional sphere.[1]/ Under this principle those who laid down general policies and gave general authorizations should be considered responsible for whatever was

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1/ On the implications of the leadership principle on war crimes see paper "The Leadership Principle and Criminal Responsibility," R & A Report No. 3110.

done to implement such policies. Certainly those who, in some law or decree, gave others the power to issue "supplementary" decrees in a certain field, must be held responsible for later measures implementing the policy inaugurated by them, even if they did not foresee all the consequences and all the detail of the ensuing legislation.

B. Länder Legislation

Besides lawmaking by the Reich there existed, throughout the entire period of the Nazi regime, legislation by the various states (Länder). But while these units during a brief initial phase retained an autonomy, however limited, they lost it and in 1934 became mere administrative sub-divisions of the Reich. Correspondingly, as to their legislation, two phases have to be distinguished: In the first year of the regime, their law-making was still to a certain extent the exercise of an autonomous right. In the later stage of development such "legislation" became mere exercise of delegated authority.

1. Prior to 30 January 1934. After the Nazis came to power on 30 January 1933, the same development with respect to legislation in the member-states of the Reich took place as in the Reich itself. While the right of the state parliaments to legislate continued to exist for a while,[1] it became a mere paper right, while, in practice, all Land legislation was enacted by the Land governments. The Länder acquired this right of cabinet legislation through the law of 31 March 1933,[2] a Reich Cabinet Law which constituted the "Enabling Act" for the Länder, authorizing the state governments to enact legislation without concurrence of the state parliaments. Thereafter, state laws were generally issued as Cabinet laws. According to the Reich law of 7 April 1933,[3] such laws were promulgated by the Reich Governors, who were

1. Unlike the Reichstag, which was never formally abolished, the state parliaments were abolished by Reich Law of 30 January 1934 (RGBl. I, p.75.
2. RGBl. I, p. 153
3. RGBl. I, p. 173

appointed at that time as Reich supervisors over the affairs of the respective states. The laws continued to be published in the various statute books of the states.

Two examples of state laws enacted prior to 1934 may serve as illustrations, one taken from Bavaria, as illustration of state laws in general, the other from Prussia, where the form was slightly different.

A Bavarian law concerning expropriation for purposes of job procurement of 1 August 1933[1] had the following initial sentence:

> "The Bavarian cabinet as state government has enacted the following law on the basis of art. 1 para. 1 of the law concerning the coordination between Reich and Länder of 31 March 1933."[2]

Following the text of the statute, there appear the dateline "Munich, 26 July 1933," the signature of the members of the Bavarian cabinet: "Ludwig Siebert, Adolf Wagner, Hermann Esser, Dr. Hans Frank, H. Schemm," and the following sentence:

> "This statute is herewith promulgated and published. Munich, 1 August 1933. Franz von Epp, Reich Governor of Bavaria."

In Prussia, unlike the other states, Hitler himself was Reich Governor and had delegated the exercise of the Reich Governor's rights and powers to Göring[3], who, in the process of legislation, thus acted in a twofold capacity: as member and head of the Prussian government, and as Reich Governor for Prussia.

1. Gesetz-und Verordnungsblatt fur den Freistaat Bayern, 1933, p. 217
2. RGBl.I p. 153
3. See laws of 7 April 1933 (RGBl.I, 173) and 30 January 1935 (RGBl.I; 35); and Führer decree of 30 January 1935 (RGBl.I, 75).

Thus, statutes took the following form:[1]

"The state ministry has enacted the following law" (text of the law follows):

Berlin, 30 November 1933. The Prussian State Ministry.
Göring
also as Interior
Minister
Popitz

The foregoing law, enacted by the Prussian state ministry, is herewith promulgated.
Berlin, 30 November 1933. For the Reich Chancellor:
The Prussian Minister President.
Göring."

At this stage, some initiative was still left to the state governments, and their members can certainly be considered as responsible for legislation enacted by them. At the same time, the Reich Governors, who had the actual if not the legal authority to supervise this legislation, can likewise be considered as responsible.

2. After 30 January 1934. With the enactment of the Law concerning the Reconstruction of the Reich of 30 January 1934[2] the Länder were deprived of their autonomy and their governments put under the authority of the Reich. They thus became agencies subordinated to the Reich government also in respect to legislation. The first executive decree to the law mentioned, of 2 February 1934,[3] therefore provided in Art. 3 that "State laws require the consent of the respective Reich minister." In practice, each law considered by a state government had to be approved by the Reich

1. Illustration from Prussian law concerning the Secret State Police, of 30 November 1933 (Preussische Gesetzsammlung, 1933, p.413)
2. RGBl. I; p. 75
3. RGBl. I, p. 81

Government. The law of 30 January 1935[3] provided that the Reich Governor of the respective state should promulgate the law after it had got the consent of the Reich Government. He was thus charged with the responsibility of seeing to it that this consent was received in each individual case. In practice, not much initiative remained with the states, and the Reich even assumed the right to order enactment of a law by a state government whenever such law appeared desirable for the region in question.

Illustrations, again taken from a Bavarian and a Prussian law, may serve to show the form which state "laws" assumed under these regulations.

The Bavarian law concerning state supervision of schools, of 14 March 1938,[1] started with:

"The Bavarian state government has enacted the following law." Following the text came:

"Munich, 10 March 1938. The Bavarian State Government
Ludwig Siebert. Adolf Wagner.

In the name of the Reich I herewith promulgate the foregoing law, to which the Reich Government has given its approval.
Munich, 14 March 1938. The Reich Governor of Bavaria.
Franz von Epp."

Similarly, the Prussian law concerning the Secret State Police, of 10 February 1936,[2] began:

"The state ministry has enacted the following law," and ended:

"Berlin, 10 February 1936. The Prussian State Ministry.
Göring. Frick.

1. Gesetz-und Verordnungsblatt, 1938, p. 141
2. Gesetzsammlung 1938, p. 21
3. RGBl. I, p. 65

In the name of the Reich I promulgate for the Führer and Reich Chancellor the foregoing law, to which the Reich Government has given its approval.

Berlin, 10 February 1936. The Prussian Minister President. Göring"

The question of responsibility for state legislation after 1934 is more difficult than in the case of pure Reich legislation or state legislation in 1933. There can be no doubt that those members of the Reich cabinet who participated by giving their approval or possibly by initiating or ordering the issuance of such laws are primarily responsible, since state lawmaking actually constituted Reich legislation for regional sub-divisions through subordinate agencies. More difficult is the question of whether those Reich cabinet members whose individual consent was not required can be made responsible, since no information is available concerning the procedure in which such consent was given (whether by ministers concerned only, or by all members in the "circulation procedure," or otherwise). Finally, the question remains as to whether members of the state governments concerned and Reich Governors promulgating the laws can be considered responsible. It seems that no over-all answer can be given. Whenever state governments were ordered to enact a certain law they were in a position not different from that of any official obeying and executing administrative directives. But whenever the initiative lay with the state government, its members as well as the supervising Reich Governor should be considered fully responsible.

It should be noted, that, as in the case of Reich legislation, executive or supplementary decrees by the respective ministries formed the most numerous and got the least important portion of Land legislation after 1933. These decrees were based on "enabling" Reich or state laws. Accountability for such legislation would appear to be the same as in the case of the corresponding Reich decree legislation: those responsible for the issuance of the decrees as well as the enacters of the "enabling" laws should be considered responsible.

II. LEGISLATION AND PARTICIPANTS IN LEGISLATION DURING THE WAR

After the outbreak of the war, the legislative bodies and processes described in Chapter I continued. In addition, a new legislative body, with new lawmaking procedures, was established by the creation of the Ministerial Council for the Defense of the Reich.

A. The Ministerial Defense Council and its Legislation

The Ministerial Defense Council (Ministerrat für die Reichsverteidigung) was established by Führer decree of 30 August 1939,[1] ostensibly as the highest body, under Hitler, for coordination of tasks arising out of war conditions, but in reality as supreme legislative and executive agency for the whole Reich and all Reich affairs during the war. This body was authorized to issue "decrees which have the force of laws" (Verordnungen mit Gesetzeskraft) without the participation of the Führer himself, who was thus freed from the task of ordinary legislation but could, of course, dictate the Council's actions

1. RGBl.I, p. 1539

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whenever necessary. He also reserved the right, as the decree of 30 August 1939 put it, "to order the enactment of a law by the cabinet or the Reichstag" whenever he chose to resort to such a procedure. But whenever the Führer did not interfere, the Ministerial Council was free to enact any legislation it saw fit, whatever its contents, even if it overrode existing legislation.

In lawmaking, as a rule, the Ministerial Council acted as a body, with the consent of all six of its members:

Göring, as chairman
The Deputy Leader (first Hess, then Bormann)
The General Commissioner for Reich Administration (first Frick, then Himmler; during the first period, Himmler was already Frick's deputy as General Commissioner)
The General Commissioner for Economy (Funk)
The Chief of the Armed Forces High Command (Keitel)
The Chief of the Reich Chancellery (Lammers), acting as Secretary of the Ministerial Council.

Decrees to be issued could be studied at a meeting of the entire Council or, as in the cabinet procedure, by circulating the proposed measure among the members and getting their views in writing. The role of Lammers in this procedure was identical with the one he played in cabinet legislation. Moreover, it was usual to circulate the bill also among the members of the Cabinet who were not members of the Council, and to give them a chance to express their opinions, without, of course, giving them a formal right to consent or veto.[1]

Decree-laws enacted by the Ministerial Council could bear the signatures of all members or of those whose fields were most directly touched by the respective law, but the names

1. See von Stutterheim, p.34.

SECRET

of Göring as chairman and of Lammers as Secretary of the Council were always included.[1] Such a decree-law appeared as follows:

"The Ministerial Council for the Defense of the Reich decrees with force of law: (follows text of decree).

Berlin, 20 December 1939.

The Chairman of the Ministerial Council for the Defense of the Reich

Göring, Generalfeldmarschall

The General Commissioner for Reich Administration
Frick

The Chief of the Armed Forced High Command
Keitel

The Reich Minister and Chief of the Reich Chancellery
Dr. Lammers"

While those signing the decree can be considered primarily responsible, all other members are likewise answerable, because each of them contributed to the decision concerning the enactment of the law. Whether any member of the cabinet outside the Council could be made responsible is more doubtful, since such persons had no power to veto the bill. If it can be proved, however, that such a cabinet member took an active part in the instigation, preparation, and final enactment of the law, he too should be held accountable.

Besides the procedure in which the Council legislated as a body, there also existed a process by which the General Commissioner for Reich Administration or the General Commissioner for Economy could enact a decree with the consent of two other

1. Decree concerning the Reich Labor Service during the War, of 20 December 1939, RGBl.I, p. 2465.

members but without the entire body participating in the enactment. The two members whose consent was required were, in case of a decree issued by the General Commissioner for Reich Administration, the Chief of the Armed Forces High Command and the General Commissioner for Economy or the Delegate for the Four Year Plan (i.e., with Frick or Himmler legislating, Keitel and either Funk or Göring consented); in case of a decree issued by the General Commissioner for Economy, the Chief of the Armed Forces High Command and the General Commissioner for Reich Administration (i.e., with Funk legislating, Keitel and Frick or later Himmler agreed). These three-man committees were supposed to legislate whenever the specific spheres of administration or war economy were concerned. There were no restrictions to such legislation, which could override existing legislation and did not require participation or approval of the other members of the Council.

The following are illustrations for the three cases in which such legislation could take place.

a. Legislation by the General Commissioner for Economy:[1]

"On the basis of statutory authorization[2] and in agreement with the General Commissioner for Reich Administration and the Armed Forces High Command the following is decreed: (follows text of decree)

Berlin, 27 August 1939.
The General Commissioner for Economy
Walther Funk."

1. As appears from this decree, these procedures were already applied before the Ministerial Council was officially established on 30 August 1939.
2. Such statutory authorization, if ever given, was never published.

b. Legislation by the General Commissioner for Reich Administration, with cooperation of the General Commissioner for Economy and the Armed Forces High Command:[1]

"On the basis of statutory authorization and in agreement with the General Commissioner for Economy and the Armed Forces High Command the following is decreed for the territory of the Greater German Reich: (follows text of the decree)

Berlin, 3 November 1939.
The General Commissioner for Reich Administration
The deputy: Himmler"

c. Legislation by the General Commissioner for Reich Administration, with cooperation of the Delegate for the Four Year Plan and the Armed Forces High Command:[2]

"On the basis of statutory authorization and in agreement with the Delegate for the Four Year Plan and the Armed Forces High Command the following is decreed: (follows text of the decree)

Berlin, 1 August 1940.
The General Commissioner for Reich Administration
Frick."

Criminal responsibility for legislation by the three-man body in these cases lies, of course, primarily with the three persons mentioned in each such decree. Additional responsibility of other members of the Ministerial Council or of the Cabinet would have to be proved for each specific instance through additional evidence of their participation in the preparation or enactment of such legislation.

1. Decree concerning the Registration of Enemy Property, 3 November 1939, RGBl.I, p.2141
2. Decree concerning the Proof of Racial-German Origin, 1 August 1940, RGBl.I, p. 1063.

B. Other Types of Legislation During the War

Except for the legislation of the Ministerial Council and its members, no new types of lawmaking were devised during the war, and the previous forms of legislation continued. Führer decrees were numerous and concerned important pieces of legislation. The other procedures, however, became increasingly less important. Cabinet legislation was rarely resorted to, and only one or two statutes were enacted by the Reichstag. On the other hand, executive and supplementary decrees, issued on the basis of authorization in statutes and decree-laws, abounded and continued frequently to contain the most important portions of legislation. Such lawmaking by executive or supplementary decrees issued by ministries and similar executive agencies was, of course, also resorted to when legislation by the Ministerial Council and its members was concerned. In the latter case, not only the authority issuing the executive decree but also the members of the Council connected with the enactment of the authorizing decree or decree-law should be held responsible for whatever crime was intended and initiated through the issuance of the executive or supplementary decree.

APPENDIX

Reference List of Sources on Other Governmental Agencies

Note: Sources listed in the following, with the exception of special war crimes papers prepared by R & A, do not provide information on particular jurisdictional responsibilities for specific crimes but give the background information on organizational structure, functions, and, sometimes, personalities, which is necessary in order to judge criminal responsibilities of organizations and persons. Reference is made mainly to sources on the various Reich ministries, which, in each case, usually contain also material on regional and local authorities subordinate to the respective ministry. Only in the case of the Ministry, the sources are dealing with subordinate agencies and authorities (such as police or regional and local agencies of general interior administration) listed under special headings.

Foreign Office: The best and most up-to-date survey may be found in an interrogation of Rudolf Schleier, a former deputy chief of the Cultural Policy Department of the Foreign Office (Headquarters, Third United States Army, Office of the Assistant Chief of Staff G-2, Interrogation Report No. 3, 15 May 1945). This is also a valuable source on personalities within the Foreign Office. A special breakdown of the Cultural-Political Department of the Foreign Office may be found in Document C.S.D.I.C. (U.K.), PW Paper 41.

Reich Ministry of the Interior: FEA (Enemy Branch), EIS-12, May 1945: Report on The Reich Ministry of the Interior; Civil Affairs Handbook Germany, Section 2: Government and Administration (Army Service Forces Manual M 356-2, 10 March 1944), chapter VI; for public health authorities in particular: "Nazi Racial and Health Policy", R & A Report No. 3114.7; (British) Basic Handbook Germany Part II, Administration, chapter X.

Police: SHAEF, G-2 Handbook on The German Police (E.D.S./G/10, April 1945); Civil Affairs Handbook Germany, Section 14: Public Safety (Army Service Forces Manual M 356-14, 7 December 1943); (British) Basic Handbook on Germany Part II, Administration, chapter VI. "Nazi Organizations Involved in the Commission of War Crimes: The Gestapo," R & A Report No. 3113.6, contains information on the Gestapo and certain central police authorities.

Authorities of General Interior Administration on the Regional and Local Levels: (British) Basic Handbook Germany, Part II, Administration, chapters II, III; Civil Affairs Handbook

Germany, Section 2: Government and Administration (Army Service Forces Manual M 356-2, 10 March 1944), chapters VII, VIII.

Reich Ministry of Propaganda and Public Enlightenment: Civil Affairs Handbook Germany, Section 12: Communications and Control of Public Opinion (Army Service Forces M 356-12, 4 April 1944), chapters II C and D, III; (British) Basic Handbook Germany, Part II: Administration, chapter XII. A breakdown of the Ministry is also contained in "Principal Nazi Organizations Involved in the Commission of War Crimes: The Nazi Party," R & A Report No. 3113.7, Appendix I.

Reich Ministry of Finance: A good breakdown of the organization of the Ministry may be found in an interrogation of Dr. Heinz Oeftering, an official in the ministry: 6824 DIC (MIS)/M. 1122, 15 April 1945 (OSS CID No. 125422). A brief summary of regional organization is in FEA, Enemy Branch, EA-1, February 1945, report on Location and Records of Major Economic Control Agencies in Germany, chapter II E.

Reich Ministry of Justice: Civil Affairs Handbook Germany, Section 3: Legal Affairs (Army Forces Manual M 356-3, 29 February 1944): Deals also with courts, public prosecutors, etc.; (British) Basic Handbook Germany, Part II: Administration, chapter V (mainly on courts. "Nazi Plans for Dominating Germany and Europe: Domestic Crimes; Part Two: The Organization of Terrorism," R & A Report No. 3114.2, contains discussion of criminal responsibility of these agencies.

Reich Ministry of Economics: FEA (EIS-11) report on Germany: Ministry of Economics; (British) Basic Handbook Germany, Part II: Administration, chapter I; Civil Affairs Handbook Germany, Section 2T: Government and Administration, Economic Controls in Nazi Germany; (Army Service Forces Manual M 356-2T, 1 February 1944), particularly chapter A.1.E.

Reich Ministry of Food and Agriculture: FEA, Enemy Branch (EIS-34, March 1945), report on The Reich Ministry of Food and Agriculture and the Reich Forestry Office; "Principal Nazi Organizations Involved in the Commission of War Crimes: The Nazi Party," R & A Report No. 3113.7, Appendix II.

Reich Ministry of Labor: Civil Affairs Handbook Germany, Section 9: Labor (Army Service Forces Manual M 356-9, 3 June 1944), chapters III, IV, VI; FEA, Enemy Branch (EIS-37), report on Germany: Ministry of Labor.

Reich Ministry of Education: Civil Affairs Handbook Germany, Section 15: Education (Army Service Forces Manual M 356-15, 4 July 1944) chapters III, VII (also dealing with school system); (British) Basic Handbook Germany Part II: Administration, chapter XIII.

Reich Ministry of Ecclesiastical Affairs: (British) Basic Handbook Germany, Part II: Administration, chapter XV; "The Persecution of the Christian Churches"; R & A Report No. 3114.4.

Reich Ministry of Transportation: FEA, Enemy Branch (EIS-28): report on Germany: Ministry of Transportation; Civil Affairs Handbook Germany, Section 2: Government and Administration (Army Service Forces Manual M 356-2, 10 March 1944), chapter XI.

Reich Ministry of Communications (Postal Ministry): Civil Affairs Handbook Germany, Section 12: Communications and Control of Public Opinion (Army Service Forces Manual M 356-12, 4 April 1944), chapter IV; Civil Affairs Handbook Germany, Section 2: Government and Administration (Army Service Forces Manual M 356-2, 10 March 1944), chapter XII.

Reich Ministry for Armament and War Production: FEA, German-Austrian Branch (EIS-13, February 1945): report on the Speer Ministry; Civil Affairs Handbook Germany, Section 2T: Government and Administration, Economic Controls in Nazi Germany (Army Service Forces Manual M 356-2T, 1 February 1944).

Reich Ministry for the Occupied Eastern Territories (Rosenberg Ministry): "German Military Government over Europe: Ostland and the Ukraine", R & A No. 2500, chapter B. 3.

Reichsbank: Civil Affairs Handbook Germany, Section 5: Money and Banking (Army Service Forces Manual M 356-5, 7 April 1944), chapter III, 3.

Four Year Plan Office: Civil Affairs Handbook Germany, Section 2T: Government and Administration, Economic Controls in Nazi Germany (Army Service Forces Manual M 356-2T, 1 February 1944), chapter A, 1, C.

Special Commissariats, and Similar Special Agencies: For most of them, see above under respective ministries, e.g., for Commissioner-General for Labor Supply under Labor Ministry, for Commissar for Ocean Shipping under Ministry of Transportation. For the Office of the Reich Commissar for the Strengthening of German Folkdom (Himmler) see "Principal Nazi Organizations Involved in the Commission of War Crimes: the Nazi Party", R & A Report No. 3113.7.

Non-Military Occupation Authorities: R & A series on German Military Government over Europe (R & A Report No. 2500) contains a large number of reports dealing with various German controls in occupied Europe (such as police, courts) and with authorities in the various individual regions (such as the Netherlands, the General Government; etc.). "Nazi Spoliation of Property in Occupied Europe", R & A Report No. 3114.6 chapter III,C.